

¹ Docket No. 00-1643 (issued April 3, 2001).

lower extremity. The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.²

Appellant underwent a total left knee replacement on March 25, 2002, which the Office authorized. On February 1, 2004 he filed a claim for an increased schedule award. On June 7, 2004 the Office issued a schedule award for a 50 percent total impairment of the left lower extremity. In a decision dated April 3, 2006, an Office hearing representative found a conflict in medical opinion and remanded the case for referral to an impartial medical specialist.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, who examined appellant on November 16, 2006. Dr. Zeidman related appellant's history and current complaints. He reviewed appellant's record and described his findings on physical examination. Dr. Zeidman determined that appellant had a 45 percent impairment of the left lower extremity. He based this on 40 points for pain, 21 points for range of motion and 25 points for stability, minus 5 points for extension lag, for a total of 85 points.

The Office medical adviser reviewed Dr. Zeidman's evaluation and found that the addition actually amounted to 81 points, which represented a fair result from the total knee replacement or a 50 percent impairment of the left lower extremity.

In a decision dated March 21, 2007, the Office denied an increased schedule award, as appellant had already received compensation for a 50 percent impairment of his left lower extremity.

On October 19, 2007 an Office hearing representative affirmed, finding that Dr. Zeidman's opinion, as reviewed by the Office medical adviser, represented the weight of the medical evidence and established that appellant had no more than a 50 percent total impairment of his left lower extremity. On appeal, appellant's attorney argues that Dr. Zeidman did not properly evaluate the impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴

² On February 22, 1994 appellant, then a 46-year-old aircraft mechanic, slipped on a patch of ice. The Office accepted his claim for a torn medial meniscus. He underwent a partial medial meniscectomy and abrasion chondroplasty of the medial femoral condyle and patella. The Office later accepted left knee osteoarthritis.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

ANALYSIS

Table 17-33, page 547 of the A.M.A., *Guides* covers impairment of the lower extremity due to a total knee replacement. A good result from such surgery represents 37 percent impairment. A fair result represents 50 percent impairment. A poor result represents 75 percent impairment. The evaluating physician places the claimant in one of these broad categories based on the point system described in Table 17-35, page 549.

Under this point system, the presence of pain is rated as mild, moderate or severe. These are subjective classifications. The evaluating physician must consider the patient's history and current complaints and clinical findings. Dr. Zeidman, the Board-certified orthopedic surgeon and impartial medical specialist, found that appellant's pain was best described as mild. Appellant complained of only occasional pain and swelling. He told Dr. Zeidman that these were "not too bad" and were associated with increased activity, such as long-standing or walking. Dr. Zeidman assigned 40 points for pain, which placed appellant near the middle of the mild classification. The Board finds this reasonable.

Points for range of motion are not subjective. The claimant receives one point for every five degrees of motion. Appellant's range of motion was 105 degrees, so Dr. Zeidman correctly assigned 21 points.

As for stability, anteroposterior movement of less than five millimeters is worth 10 points, and mediolateral movement of five degrees or less is worth 15 points. Dr. Zeidman reported no instability on physical examination, so he correctly assigned 25 points for stability.

From the sum of 86 points, one must subtract points for flexion contracture, extension lag and alignment deformity. Dr. Zeidman reported no flexion contracture or alignment deformity (x-rays showed the knee replacement well aligned). He did report an extension lag of five degrees. This is worth five points.

Appellant's total score under the point system is 81 points. Under Table 17-33, page 547 of the A.M.A., *Guides*, this places appellant in the broad "fair results" category (50 to 84 points), which means he has a 50 percent impairment of his left lower extremity.⁷ The Board finds that

⁵ 5 U.S.C. § 8123(a).

⁶ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁷ Appellant's 81 points places him quite high in the broad "fair results" category, only four points away from "good results." So even if Dr. Zeidman had assigned the fewest points possible in the subjective mild pain classification (30), appellant's left knee replacement would still be found to have given him fair results with no entitlement to an increased award.

Dr. Zeidman's opinion as the impartial medical specialist is based on a proper history and is sufficiently well reasoned that it must be accorded special weight in determining the extent of appellant's permanent impairment. As appellant has already received compensation for a 50 percent impairment of his left lower extremity, he is entitled to no additional award. The Board will affirm the Office decisions denying an increased schedule award.

CONCLUSION

The Board finds that appellant has no more than a 50 percent permanent impairment of his left lower extremity. The weight of the medical evidence establishes that he is not entitled to an increased schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and March 21, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board